

AMENDED IN SENATE MAY 16, 2011
AMENDED IN SENATE APRIL 27, 2011
AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 531

Introduced by Senator Rubio
(Coauthor: Assembly Member Ma)

February 17, 2011

An act to amend Section 1524.1 of the Penal Code, relating to search warrants.

LEGISLATIVE COUNSEL'S DIGEST

SB 531, as amended, Rubio. Search warrants: HIV testing.

Existing law provides that when a defendant or minor has been charged with a specified sexual offense, the court may, under certain circumstances and at the request of the victim, issue a search warrant for the purpose of testing the accused's blood or saliva with any HIV test. Existing law provides that the local health officer shall have the responsibility for disclosing test results to the victim who requested the test and to the accused who was tested.

This bill would require, if a victim requests an HIV test of a defendant against whom an information or indictment has been presented for a crime in which, by force or threat of force, the defendant is alleged to have compelled the victim to engage in sexual activity, the HIV test to be administered not later than 48 hours after the date on which the ~~information or indictment is presented~~ *search warrant is issued*. The bill would require the local health officer to disclose the HIV test results as soon as practicable. Because the bill would impose additional duties

on local governmental entities, it would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1524.1 of the Penal Code is amended to
2 read:

3 1524.1. (a) The primary purpose of the testing and disclosure
4 provided in this section is to benefit the victim of a crime by
5 informing the victim whether the defendant is infected with the
6 human immunodeficiency virus (HIV). It is also the intent of the
7 Legislature in enacting this section to protect the health of both
8 victims of crime and those accused of committing a crime, and to
9 comply with provisions of federal law regarding testing as a
10 condition of receiving federal grants. Nothing in this section shall
11 be construed to authorize mandatory testing or disclosure of test
12 results for the purpose of a charging decision by a prosecutor, nor,
13 except as specified in subdivisions (g) and (i), shall this section
14 be construed to authorize breach of the confidentiality provisions
15 contained in Chapter 7 (commencing with Section 120975) of Part
16 4 of Division 105 of the Health and Safety Code.

17 (b) (1) Notwithstanding the provisions of Chapter 7
18 (commencing with Section 120975) of Part 4 of Division 105 of
19 the Health and Safety Code, when a defendant has been charged
20 by complaint, information, or indictment with a crime, or a minor
21 is the subject of a petition filed in juvenile court alleging the
22 commission of a crime, the court, at the request of the victim, may
23 issue a search warrant for the purpose of testing the accused's
24 blood or oral mucosal transudate saliva with any HIV test, as
25 defined in Section 120775 of the Health and Safety Code, only
26 under the following circumstances: when the court finds, upon the

1 conclusion of the hearing described in paragraph (3) or in those
2 cases in which a preliminary hearing is not required to be held,
3 that there is probable cause to believe that the accused committed
4 the offense, and that there is probable cause to believe that blood,
5 semen, or any other bodily fluid identified by the State Department
6 of Health Care Services in appropriate regulations as capable of
7 transmitting HIV has been transferred from the accused to the
8 victim.

9 (2) Notwithstanding Chapter 7 (commencing with Section
10 120975) of Part 4 of Division 105 of the Health and Safety Code,
11 when a defendant has been charged by complaint, information, or
12 indictment with a crime under Section 220, 261, 261.5, 262, 264.1,
13 266c, 269, 286, 288, 288a, 288.5, 289, or 289.5, or with an attempt
14 to commit any of the offenses, and is the subject of a police report
15 alleging the commission of a separate, uncharged offense that
16 could be charged under Section 220, 261, 261.5, 262, 264.1, 266c,
17 269, 286, 288, 288a, 288.5, 289, or 289.5, or of an attempt to
18 commit any of the offenses, or a minor is the subject of a petition
19 filed in juvenile court alleging the commission of a crime under
20 Section 220, 261, 261.5, 262, 264.1, 266c, 269, 286, 288, 288a,
21 288.5, 289, or 289.5, or of an attempt to commit any of the
22 offenses, and is the subject of a police report alleging the
23 commission of a separate, uncharged offense that could be charged
24 under Section 220, 261, 261.5, 262, 264.1, 266c, 269, 286, 288,
25 288a, 288.5, 289, or 289.5, or of an attempt to commit any of the
26 offenses, the court, at the request of the victim of the uncharged
27 offense, may issue a search warrant for the purpose of testing the
28 accused's blood or oral mucosal transudate saliva with any HIV
29 test, as defined in Section 120775 of the Health and Safety Code,
30 only under the following circumstances: when the court finds that
31 there is probable cause to believe that the accused committed the
32 uncharged offense, and that there is probable cause to believe that
33 blood, semen, or any other bodily fluid identified by the State
34 Department of Health Care Services in appropriate regulations as
35 capable of transmitting HIV has been transferred from the accused
36 to the victim. As used in this paragraph, "Section 289.5" refers to
37 the statute enacted by Chapter 293 of the Statutes of 1991,
38 penetration by an unknown object.

39 (3) (A) Prior to the issuance of a search warrant pursuant to
40 paragraph (1), the court, where applicable and at the conclusion

1 of the preliminary examination if the defendant is ordered to answer
2 pursuant to Section 872, shall conduct a hearing at which both the
3 victim and the defendant have the right to be present. During the
4 hearing, only affidavits, counter affidavits, and medical reports
5 regarding the facts that support or rebut the issuance of a search
6 warrant under paragraph (1) shall be admissible.

7 (B) Prior to the issuance of a search warrant pursuant to
8 paragraph (2), the court, where applicable, shall conduct a hearing
9 at which both the victim and the defendant are present. During the
10 hearing, only affidavits, counter affidavits, and medical reports
11 regarding the facts that support or rebut the issuance of a search
12 warrant under paragraph (2) shall be admissible.

13 (4) A request for a probable cause hearing made by a victim
14 under paragraph (2) shall be made before sentencing in the superior
15 court, or before disposition on a petition in a juvenile court, of the
16 criminal charge or charges filed against the defendant.

17 (c) (1) In all cases in which the person has been charged by
18 complaint, information, or indictment with a crime, or is the subject
19 of a petition filed in a juvenile court alleging the commission of a
20 crime, the prosecutor shall advise the victim of his or her right to
21 make this request. To assist the victim of the crime to determine
22 whether he or she should make this request, the prosecutor shall
23 refer the victim to the local health officer for prerequest counseling
24 to help that person understand the extent to which the particular
25 circumstances of the crime may or may not have put the victim at
26 risk of transmission of HIV from the accused, to ensure that the
27 victim understands both the benefits and limitations of the current
28 tests for HIV, to help the victim decide whether he or she wants
29 to request that the accused be tested, and to help the victim decide
30 whether he or she wants to be tested.

31 (2) The Department of Justice, in cooperation with the California
32 District Attorneys Association, shall prepare a form to be used in
33 providing victims with the notice required by paragraph (1).

34 (d) (1) If the victim decides to request HIV testing of the
35 accused, the victim shall request the issuance of a search warrant,
36 as described in subdivision (b).

37 (2) Neither the failure of a prosecutor to refer or advise the
38 victim as provided in this subdivision, nor the failure or refusal by
39 the victim to seek or obtain counseling, shall be considered by the
40 court in ruling on the victim's request.

1 (e) The local health officer shall make provision for
2 administering all HIV tests ordered pursuant to subdivision (b).

3 (f) Any blood or oral mucosal transudate saliva tested pursuant
4 to subdivision (b) shall be subjected to appropriate confirmatory
5 tests to ensure accuracy of the first test results, and under no
6 circumstances shall test results be transmitted to the victim or the
7 accused unless any initially reactive test result has been confirmed
8 by appropriate confirmatory tests for positive reactors.

9 (g) The local health officer shall have the responsibility for
10 disclosing test results to the victim who requested the test and to
11 the accused who was tested as soon as practicable. However, no
12 positive test results shall be disclosed to the victim or to the accused
13 without also providing or offering professional counseling
14 appropriate to the circumstances.

15 (h) The local health officer and victim shall comply with all
16 laws and policies relating to medical confidentiality subject to the
17 disclosure authorized by subdivisions (g) and (i). Any individual
18 who files a false report of sexual assault in order to obtain test
19 result information pursuant to this section shall, in addition to any
20 other liability under law, be guilty of a misdemeanor punishable
21 as provided in subdivision (c) of Section 120980 of the Health and
22 Safety Code. Any individual as described in the preceding sentence
23 who discloses test result information obtained pursuant to this
24 section shall also be guilty of an additional misdemeanor
25 punishable as provided for in subdivision (c) of Section 120980
26 of the Health and Safety Code for each separate disclosure of that
27 information.

28 (i) A victim who receives information from the health officer
29 pursuant to subdivision (g) may disclose the test results as the
30 victim deems necessary to protect his or her health and safety or
31 the health and safety of his or her family or sexual partner.

32 (j) A person transmitting test results or disclosing information
33 pursuant to this section shall be immune from civil liability for
34 any actions taken in compliance with this section.

35 (k) The results of any blood or oral mucosal transudate saliva
36 tested pursuant to subdivision (b) shall not be used in any criminal
37 proceeding as evidence of either guilt or innocence.

38 (l) If a victim, pursuant to subdivision (b), requests an HIV test
39 of a defendant against whom an information or indictment has
40 been presented for a crime in which, by force or threat of force,

1 the defendant is alleged to have compelled the victim to engage
2 in sexual activity, the HIV test shall be administered not later than
3 48 hours after the date on which the ~~information or indictment is~~
4 ~~presented~~ *search warrant is issued*.

5 SEC. 2. If the Commission on State Mandates determines that
6 this act contains costs mandated by the state, reimbursement to
7 local agencies and school districts for those costs shall be made
8 pursuant to Part 7 (commencing with Section 17500) of Division
9 4 of Title 2 of the Government Code.